

RULEMAKING NOTICE FORM

Notice Number **2015-101**

Rule Number **He-W 656.03(a)-(b) & He-W 856.03**

1. Agency Name & Address: Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301	2. RSA Authority: <u>167:3-c,I</u>
	3. Federal Authority: _____
	4. Type of Action:
	Adoption <u> X </u>
	Amendment <u> X </u>
	Repeal _____
	Readoption _____
	Readoption w/amendment _____

5. Short Title: **Treatment of Jointly Owned Resources for All Categories of Cash Assistance and Those Categories of Medicaid that Require a Resource Test**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to amend He-W 656.03(a)-(b), which describe how personal property resources owned jointly by the applicant and an individual or individuals outside the assistance group are treated when determining eligibility for all categories of cash assistance benefits. The amendment restores in the rule the date of November 1, 1995 as the date separating how jointly owned resources established before and after that date shall be treated. The November 1, 1995 date was included in the rules adopted by Document #6111, effective 11/1/1995, but was erroneously removed during interim rulemaking in 1997 and subsequent rulemaking did not correct the mistake. Although the date had been inadvertently removed, Department policy did not change; the Department continued treating the applicant's jointly owned personal property resources established on or after November 1, 1995 as solely the applicant's during eligibility determinations. Personal property resources established before November 1, 1995 continued to be treated as a resource equally shared among the applicant and joint owner(s). The proposed amendment restores the inadvertently deleted date from the rules.

The Department is proposing to adopt identical language reflecting the entirety of He-W 656.03 into He-W 856.03 to describe how resources owned jointly by the applicant and an individual or individuals outside the assistance group are treated when determining eligibility for those categories of Medicaid that require a resource test. He-W 800 is where all rules associated with medical assistance are now located.

Department policy remains unchanged.

6. (b) Brief description of the groups affected:

Applicants and recipients for all categories of cash assistance and those categories of Medicaid that require a resource test will be affected by the rule.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 656.03(a)-(b)	RSA 167:3-c,I; RSA 167:4-a; RSA 167:7,IV; 42 USC 1382b(c)(1)(D); 20 CFR 416.1208
He-W 856.03	RSA 167:3-c,I; RSA 167:4-a; RSA 167:7,IV; 42 USC 1396p(c)(3); 42 CFR 435.845

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant Street E-mail: **catherine.bernhard@dhhs.state.nh.us**
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **July 24, 2015**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, July 17, 2015 at 1:00pm**

Place: [**DHHS, Brown Bldg, Room 232, 129 Pleasant St., Concord, NH 03301**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **15:086**, dated **05/12/15**

- 1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

- 2. Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

- 3. Cost and benefits of the proposed rule(s):**

- A. To State general or State special funds:**

None.

- B. To State citizens and political subdivisions:**

None.

- C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not create a new program or responsibility, expand or modify an existing program or responsibility, or mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Amend He-W 656.03(a)-(b), effective 3-30-14 (Document #10563), cited and to read as follows:

He-W 656.03 Jointly Owned Resources.

(a) Personal property resources established prior to November 1, 1995, which an individual owns together with a non-assistance group member, shall be considered to be shared equally among the owners, unless the individual verifies ownership of more or less than an equal share. If the individual verifies ownership of more or less than an equal share, only the amount of the share actually owned by the client shall count as a resource.

(b) Personal property resources established on or after November 1, 1995, which an individual owns together with an individual who is not an applicant or recipient, shall be considered to belong to the individual who is applying for or receiving assistance. If there is more than one individual who is applying for or receiving assistance that jointly owns the resource, it shall be assumed that each individual owns an equal share.

Adopt He-W 856.03, cited and to read as follows:

PART He-W 856 RESOURCES

He-W 856.03 Jointly Owned Resources.

(a) Personal property resources established prior to November 1, 1995, which an individual owns together with a non-assistance group member, shall be considered to be shared equally among the owners, unless the individual verifies ownership of more or less than an equal share. If the individual verifies ownership of more or less than an equal share, only the amount of the share actually owned by the client shall count as a resource.

(b) Personal property resources established on or after November 1, 1995, which an individual owns together with an individual who is not an applicant or recipient, shall be considered to belong to the individual who is applying for or receiving assistance. If there is more than one individual who is applying for or receiving assistance that jointly owns the resource, it shall be assumed that each individual owns an equal share.

(c) If an individual wishes to rebut the ownership presumption, the individual shall submit a written statement and verification of the statement to the department including the following information:

- (1) A corroborating statement from each other account holder;
- (2) If the only other account holder is incompetent or a minor, the individual shall submit a corroborating statement from a competent adult aware of the circumstances surrounding establishment of the account;
- (3) Account records showing deposits, withdrawals and interest in the months for which ownership is an issue;
- (4) If the individual does not own any of the funds, evidence showing that the individual can no longer withdraw funds from the account; and

(5) If the individual owns only a portion of the funds, evidence showing removal from the account of such funds, or removal of the funds owned by the other account holder(s), and redesignation of the account.

(d) Any resources that the evidence establishes were owned by the other account holder(s), as determined by the department, and that the individual can no longer withdraw from the account shall not be considered to be the individual's resources. However, such resources shall be deemed available to the individual if the account holder to whom they belong is someone whose resources would be used in determining the individual's eligibility.

(e) Jointly owned real property shall be excluded if the terms of ownership of the property prevent the individual from unilaterally liquidating the property and the other owner or owners refuse to agree to the sale. The addition of a joint owner shall be evaluated as an asset transfer in accordance with He-W 620.01.

APPENDIX

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 656.03(a)-(b)	RSA 167:3-c,I; RSA 167:4-a; RSA 167:7,IV; 42 USC 1382b(c)(1)(D); 20 CFR 416.1208
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